

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Rel. No. IC-21126; No. 812-9372]

**PHL Variable Insurance Company, et al.**

June 9, 1995.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** PHL Variable Insurance Company ("PHLV"), PHL Variable Accumulation Account (the "Account"), and Phoenix Equity Planning Corporation ("Phoenix Equity").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2).

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Account in connection with the offer and sale of certain variable annuity contracts ("Existing Contracts"), and any annuity contracts that are similar in all material respects to the Existing Contracts ("Future Contracts," together with Existing Contracts, the "Contracts"), which may be sold in the future by the Account, or from the assets of any other separate account ("Future Accounts," together with the Account, the "Accounts") established in the future by PHLV in connection with the issuance of Future Contracts.

**FILING DATE:** The application was filed on December 19, 1994, and amended on May 12, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on July 5, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a

hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Applicants, c/o Phoenix Home Life Mutual Insurance Company, One American Row, Hartford, Connecticut 06115, Attention: Patricia O. McLaughlin, Esq.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Kirchoff, Senior Counsel, or Wendy Friedlander, Deputy Chief at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

**Applicants' Representations**

1. PHLV is a corporation organized under the laws of the state of Connecticut. On May 31, 1994, Phoenix Home Life Mutual Insurance Company ("Phoenix Home Life"), a New York domiciled insurer, through its wholly-owned subsidiary, PM Holdings Inc., a Connecticut corporation, acquired all of the issued and outstanding stock of PHLV. PHLV is currently licensed to issue variable annuity contracts in 26 states and the District of Columbia.

2. The Account is a separate investment account established by PHLV for the purpose of investing purchase payments received under the Existing Contracts. The Account is a unit investment trust which has filed a registration statement on Form N-4 under the Securities Act of 1933 to register the Existing Contracts.

3. The Account presently consists of seven subaccounts ("Subaccounts"), each of which currently invests in a corresponding series of The Phoenix Edge Series Fund and which may, in the future, invest in any other registered open-end management investment company funding variable annuity or variable life insurance contracts. Contract owners may allocate accumulation value to any one or more of the Subaccounts or to the general account of PHLV (the "Guaranteed Interest Account"), provided that prescribed minimum purchase payment requirements are met. PHLV may issue Future Contracts through the Account and through Future Accounts.

4. Phoenix Equity, an indirect wholly-owned subsidiary of Phoenix Home Life, is registered as a broker-dealer pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") and is a member of the National Association of

Securities Dealers. Phoenix Equity is the principal underwriter for the Existing Contracts. The principal underwriter for Future Contracts may be any broker-dealer registered as a broker-dealer pursuant to the Exchange Act and wholly-owned, directly or indirectly, by Phoenix Home Life.

5. The Phoenix Edge Series Fund is a diversified open-end management investment company which consists of various investment series or portfolios (collectively, "Portfolios") each with different investment objectives and policies. Shares of the Portfolios also are offered to other separate accounts of PHLV, Phoenix Home Life or of other insurance companies offering variable annuity or variable life insurance contracts.

6. The Existing Contracts are flexible premium variable annuity contracts offered for use by retirement plans which qualify for special federal income tax treatment under the Internal Revenue Code or by any other purchasers for whom they may be a suitable investment.

7. The Existing Contracts provide for minimum initial purchase payments and permit additional minimum purchase payments and periodic payments, subject to certain limitations. The Contracts provide for the accumulation of values on a variable basis determined by the investment experience of the Subaccounts to which the Contract owner allocates payments.

8. Prior to the maturity date, amounts held under Contracts may be transferred among the Subaccounts and the Guaranteed Interest Account. PHLV currently makes no charge for transfers among the Subaccounts, but reserves the right to assess a transfer fee, guaranteed never to exceed \$10 per transfer, after the first two transfers in each Contract year to offset administrative expenses. Currently, unlimited transfers are permitted, but PHLV reserves the right to limit the number of transfers each Contract year.

9. The Contracts also provide for the payment of a death benefit. If the Contract owner is the Annuitant and dies prior to the Contract's maturity date, and there is no surviving joint owner, a death benefit calculated according to the death benefit formula will be paid to the Contract owner's beneficiary. If the Contract owner is not the Annuitant and dies prior to the maturity date, and there is no surviving joint owner, a death benefit equal to the Contract's cash surrender value (contract value less any applicable sales charge) will be paid to the Contract owner's beneficiary. If the Contract owner and the Annuitant are not the

same person and the Annuitant dies prior to the maturity date, the contingent Annuitant becomes the Annuitant. If there is no contingent Annuitant, a death benefit calculated according to the death benefit formula will be paid to the Annuitant's beneficiary.

10. Pursuant to the death benefit formula, if the death occurred prior to the Annuitant's eighty-fifth birthday and during the first seven Contract years, the death benefit payment would be equal to the greater of: (a) The sum of all purchase payments made under the Contract less any prior partial withdrawals; or (b) the Contract value.

11. If the death occurs prior to the Annuitant eighty-fifth birthday and during Contract years 8 through 14 (or during any subsequent seven year period), the death benefit payment would be equal to the greater of: (a) The death benefit that would have been payable at the end of the immediately preceding seven year period, plus any purchase payments made and less any partial withdrawals since such date; or (b) the Contract value. After the Annuitant's eighty-fifth birthday, the death benefit is the Contract value next determined following receipt of a certified copy of the death certificate by PHLV. If the Contract owner and the Annuitant are not the same and the Contract owner dies prior to the maturity date and there is no surviving joint owner, upon receipt of due proof of death PHLV will fully surrender the Contract and pay the cash surrender value (Contract value less any applicable sales charge) to the Contract owner's beneficiary.

12. Various fees and expenses are deducted under the Contracts. Prior to maturity of a Contract, PHLV charges \$35 each year for administrative and related expenses ("Contract Fee"). This charge is waived for Contracts with an accumulation value on the last Contract anniversary date of \$50,000 or more. PHLV also makes a daily charge to the Subaccounts equal on an annual basis to 0.125% of the current value of the Subaccounts ("Administrative Service Charge"). The Administrative Service Charge is designed to cover actual administrative expenses which exceed the revenue from the Contract Fee.

13. Applicants represent that the Contract Fee and the Administrative Service Charge are guaranteed for the duration of the Contract and will be deducted in reliance upon and in conformity with all of the requirements of Rule 26a-1 under the 1940 Act.

14. PHLV will pay any premium tax due and will then deduct any premium tax from Contract value upon the earlier

of partial withdrawal, surrender of the Contract, maturity date or payment of death proceeds.

15. No front-end sales charges are deducted from premium payments under the Contracts. The Contracts assess a contingent deferred sales charge ("CDSC") which may be taken from proceeds of withdrawals from, or complete surrender of, the Contracts if assets are not held under the Contract for a specified period of time. No sales charge is taken after the annuity phase of the Contract has begun. Any sales charge is applied on a first-in, first-out basis. With respect to withdrawals or surrenders during the first year a Contract is in existence, the deduction applies against the total amount withdrawn. After the first year of a Contract, and prior to its maturity date, a withdrawal of up to 10% of the amount held under the Contract as of the previous Contract anniversary may be made each year without imposition of a withdrawal or surrender sales charge, subject to certain restrictions described in the Contract.

16. The deduction for sales charges, expressed as a percentage of the amount redeemed in excess of the 10% allowable amount, is as follows:

Age of deposit in years	CDSC as percentage of amount withdrawn
0 .....	7
1 .....	6
2 .....	5
3 .....	4
4 .....	3
5 .....	2
6 .....	1
7 and over .....	0

There is no sales charge assessed if the Contract owner or the Annuitant dies before the Contract maturity date. The total deferred sales charges on a Contract will never exceed 9% of the total purchase payments, and the applicable level of sales charge will not be changed with respect to outstanding Contracts. Sales charges imposed in connection with partial surrenders will be deducted from the Subaccounts and the Guaranteed Interest Account on a pro-rata basis.

17. Applicants are relying on Rule 6c-8 under the 1940 Act to deduct the CDSC. PHLV believes that the CDSC will not necessarily be sufficient to pay the cost of distributing the Contracts. If the CDSC is insufficient to cover such expenses, the deficiency will be met from the general account assets of PHLV, which may include amounts

derived from the charge for mortality and expenses risks, discussed below.

18. A daily charge equal to an effective annual rate of 1.25% of the net asset value of the Accounts will be imposed to compensate PHLV for bearing certain mortality and expense risks in connection with the Contracts. Of this amount, 0.85% is allocable to mortality risks and 0.40% is allocable to expense risks. The mortality and expense risk charge is guaranteed never to exceed 1.25%.

19. The mortality risk arises from PHLV's (1) guarantee that it will make annuity payments, in accordance with annuity rate provisions established at the time a Contract is issued for the life of the annuitant or in accordance with the annuity option selected, no matter how long the annuitant or other payee lives and no matter how long all annuitants as a class live, and (2) death benefit guarantees under the Contracts.

20. The expense risk borne by PHLV is the risk that the charges for administrative expenses, which are guaranteed for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts.

21. If the mortality and expense risk charges deducted are insufficient to cover the actual cost of the mortality and expense risk, PHLV will bear the loss. Conversely, if the mortality and expense risk charges deducted prove more than sufficient, the excess will be added to PHLV's surplus and will be used for any lawful purpose, including offsetting the costs of distributing the Contracts.

#### **Applicants' Legal Analysis and Conditions**

1. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Accounts in connection with the issue and sale of the Contracts.

2. Pursuant to Section 6(c) of the 1940 Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and are held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a charter normally performed by the bank itself.

4. Applicants submit that their request for exemptive relief for deduction of the mortality and expense risk charge from the assets of the Accounts in connection with the issue and sale of the Contracts would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive applications, thereby reducing Applicants' administrative expenses and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the existence of charge level or annuity-rate guarantees, and the markets in which the Existing Contracts are offered. Applicants represent that Phoenix Home Life will maintain at the offices of its actuarial department, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

6. Applicants represent that they will, prior to offering Future Contracts, conclude that the mortality and expense risk charges under such contracts (which cannot exceed in amount the mortality and risk charges under the Existing Contracts) will be within the range of industry practice for comparative contracts. PHLV will maintain at the offices of its actuarial department, and make available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of the comparative survey resulting in that conclusion.

7. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Existing contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. PHLV has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts and the owners of Existing Contracts. The basis for that conclusion is set forth in a memorandum which will be maintained by PHLV at the offices of its actuarial department and will be made available to the Commission.

8. Applicants acknowledge that, if a profit is realized from a mortality and expense risk charge under Future Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by a CDSC. Applicants represent that they will, prior to offering Future Contracts, conclude that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Future Accounts and the owners of such Future Contracts. The basis for that conclusion will be set forth in a memorandum which will be maintained by PHLV at the offices of its actuarial department and will be made available to the Commission.

9. Applicants also represent that the Accounts will invest only in underlying funds that have undertaken to have a board of directors, a majority of whom are not interested persons of any such funds within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

#### Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly

intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. IC-21127; 811-6286]

#### **BITS Trust; Notice of Application**

June 9, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANT:** BITS Trust.

**RELEVANT 1940 ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

**FILING DATE:** The application on Form N-8F was filed on May 10, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1995, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant, 400 South LaSalle Street, Chicago, Illinois 60605.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel, at (202) 942-0564, or C. David Messman, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

#### **Applicant's Representations**

1. Applicant, a registered unit investment trust, filed its notification of